

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

HAROLD MCMILLAN,

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Plaintiff,

Civil Action No. _____

VS.

**MEMORIAL HERMANN HEALTH
SYSTEM, S.J. CLEVELAND, ASAAD
ABDELMESSIAH, SECURITY GUARDS
#1, #2, and #3, and STAFF MEMBER #4,**

Defendants.

NOTICE OF REMOVAL

Defendant Memorial Hermann Health System (“Memorial Hermann”) files this notice of removal (the “Notice”) under 28 U.S.C. § 1446.

Introduction

1. Plaintiff, Harold McMillan, is an individual residing within Austin, Travis County, Texas.

2. Defendant Memorial Hermann Health System is a not-for-profit healthcare system based in Houston, Harris County, Texas.

3. On April 5, 2012, Plaintiff was arrested by a Houston Police Department officer and taken into custody following an incident that occurred at Memorial Hermann Hospital in the Houston Medical Center in Harris County, Texas.

4. Plaintiff sued Defendants in Harris County, Texas district court, alleging claims including violation of 42 U.S.C. § 1983, civil conspiracy, racial profiling, and other causes of action.

5. Defendant Memorial Hermann was served with Plaintiff's suit on or around April 10, 2014. On Memorial Hermann's knowledge, and according to the Harris County District Clerk online records, no other defendant has been properly served as of the filing of this Notice. Nor has any defendant appeared or filed any responsive pleading to date. Memorial Hermann files this Notice within the 30-day time period required by 28 U.S.C. § 1446(b). *See Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007) (time for removal commences on formal service of process).

6. True and correct copies of all documents required by § 1446(a) and Local Rule 81 are attached hereto.

Basis for Removal

7. Removal is proper on the basis of federal question jurisdiction, as authorized by 28 U.S.C. §§ 1331 and 1441. Section 1441 allows removal by the defendant if a civil action includes "a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title)". Here, Plaintiff pleads a violation of 42 U.S.C. § 1983 and alleges a deprivation "of his constitutional rights protected by the Fourth and Fourteenth Amendment." (Plaintiff's Original Petition, attached hereto as Exhibit A, at 10). As a result of Plaintiff's § 1983 cause of action, this Court has original jurisdiction over this suit. 28 U.S.C. § 1331.

8. Plaintiff also pleads a cause of action for "Racial Profiling and Discrimination," wherein Plaintiff alleges "unconstitutional actions and/or omissions" by Defendants pursuant to alleged customs by Defendant Memorial Hermann as extended to Houston Police Department officers present. (*Id.* at 10-11). While the exact nature of this cause of action is unclear, Plaintiff appears to assert a civil rights case falling under 28 U.S.C. § 1443. This civil rights claim provides an additional federal question proper for removal to this Court. *See* 28 U.S.C. § 1443.

9. In addition to the Court's original federal jurisdiction, the Court has supplemental jurisdiction over Plaintiff's remaining claims. The remaining claims all pertain to the same incident and arrest forming the basis of Plaintiff's federal claims and are thus part of the same case or controversy as Plaintiff's federal claims. 28 U.S.C. § 1337(a). In no part of the Original Petition does Plaintiff plead any nonremovable claim that would bar removal.

10. The only defendant who has been properly served with suit, Memorial Hermann, brings the removal of this case to federal court. *See* 28 U.S.C. § 1446(b)(2)(A). Because no other defendant has been properly served yet, no other defendant is required to join this Notice at this time. *See Jones v. Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007 (5th Cir. 1992) (defendants not yet served need not join removal petition).

11. Venue is proper in this district because the state court where the suit has been pending is located in this district. *See* 28 U.S.C. § 1441(a).

12. Defendant Memorial Hermann will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

Conclusion

For the foregoing reasons, Defendant asks the Court to remove this suit to the United States District Court for the Southern District of Texas.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, LLP

By: /s/ *Hector R. Chavez*

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ATTORNEYS FOR DEFENDANT
MEMORIAL HERMANN HEALTH SYSTEM

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following counsel by email and U.S. certified mail, return receipt requested, on the 2nd day of May, 2014.

Hailey A. Hobren
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/s/ *Hector R. Chavez*
Hector R. Chavez

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SOUTHERN DISTRICT OF TEXAS

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**INDEX OF MATTERS BEING FILED
WITH NOTICE OF REMOVAL**

Civil Cover Sheet (S.D. Tex.)

Exhibits to the Notice of Removal

- A. Plaintiff's Original Petition, with Plaintiff's Verification and Affidavit
- B. Civil Case Information Sheet (Harris County District Court)
- C. Citation
- D. Civil Process Pick-Up Form
- E. Proof of Service
- F. Docket Sheet from Harris County District Court
- G. List of Counsel of Record